Mohd Mopti bin Yassin v Lembaga Kemajuan Perusahaan Pertanian Negeri Pahang (LKPP) Corp Sdn Bhd & Anor

HIGH COURT (KUANTAN) — CIVIL APPEAL NO 22–26 OF 2008
AKHTAR TAHIR JC
13 MAY 2011

Tort — Detinue — Wrongful detention of chattel or cows — Right of plaintiff to bring action — Whether plaintiff's cows were allowed to enter second defendant's ladang — Whether second defendant liable for loss of plaintiff's cows — Whether defendants' had wrongfully confined or sold plaintiff's cows — Whether there was unlawful detention of plaintiff's cows by defendants

Sometime in 2003 Mohd Mopti bin Yassin ('the plaintiff') claimed to have transported 299 cows to Ladang Sri Merbau, one of the many ladangs which belonged to Syarikat Ladang LKPP Sdn Bhd ('the second defendant'), after having received permission from an employee of the second defendant ('SP3') to keep his cows on that land. However, sometime in 2005 due to the floods in Ladang Sri Merbau, the plaintiff's cows allegedly bolted to the adjoining higher pieces of land. The plaintiff claimed that despite being given permission by the second defendant to search for the cows from the adjoining pieces of land, he could not retrieve the cows because he was not given sufficient time and also because he was prevented by the management of those lands from removing those he had retrieved. The plaintiff also claimed that some of the cows that belonged to him were sold off by one of the owners of the adjoining piece of land ('the third defendant') as belonging to it. The plaintiff thus commenced the present action wherein he claimed, inter alia, a declaration that the second and third defendants had wrongfully detained and interfered with his livestock without his consent, damages for the 298 cows wrongfully detained by the defendants, general damages for wrongful detention of goods and costs. SP3, who was the assistant manager of one of the *ladangs* at the material time, confirmed that he had given permission to the plaintiff to rear his cows in Ladang Sri Merbau upon the condition that the plaintiff pay RM50 per hectare for a land area of 300 hectares and that he saw the plaintiff bringing in the 299 cows to the designated area. However, SP3 was only able to testify that he had observed the plaintiff's cows leaving the designated area because of the floods in 2005, but he was unable to confirm whether the plaintiff could retrieve any of his cows. The other witnesses for the plaintiff confirmed that they were responsible for transporting the 299 cows to Ladang Sri Merbau. The second defendant's witness, a manager of one of the *ladangs*, refuted SP3's claim that the plaintiff was ever allowed to bring his cows into Ladang Sri Merbau and denied any knowledge of any arrangement between SP3 and the plaintiff with

regard to the rearing of the cows in Ladang Sri Merbau. This witness's evidence was corroborated by five others. The third defendant called two witnesses who denied selling any cows belonging to the plaintiff.

Held, dismissing the plaintiff's claim with costs:

(1) From the demeanour of the witnesses it was difficult for this court to determine whether to believe the plaintiff's version or the second defendant's version as to whether the plaintiff's cows were in fact allowed to enter the second defendant's land. However, the factor which tilted the court's decision towards the plaintiff was the fact that there was no reason for the plaintiff to lie or to choose the second defendant as his adversary. Further, the second defendant's own employee SP3 corroborated the plaintiff's evidence. Thus it was found that the plaintiff had brought his cows into the *ladang* belonging to the second defendant and that the cows were kept there until the floods occurred (see paras 20–22 & 24).

(2) The court found SP3's testimony that the plaintiff had kept his cows on the second defendant's land at his own risk to be more probable. Further, the plaintiff was aware that the area where the *ladang* was situated was flood prone and he should have foreseen the danger his cows would face in the event of floods occurring. In the circumstances, the plaintiff was solely responsible for the safety of his cows and the second defendant was not liable for the loss of the plaintiff's cows (see paras 26 & 28–29).

(3) The plaintiff's belief that his cows had strayed to other *ladangs* was based on mere suspicion and not on observation. Thus the defendants' evidence that their *ladangs* were not easily accessible because they were fenced and demarcated by wide drains was more acceptable. In the present case, there was insufficient evidence led by the plaintiff to prove that any of his cows had strayed onto the defendants' lands (see paras 30–32).

(4) The plaintiff's cows were distinguishable from the second defendant's because they were of foreign breed. The plaintiff also could not positively prove that the two cows sold by the third defendant belonged to him. Hence, the plaintiff had failed to prove whether any of his cows were wrongfully confined or sold by the defendants (see paras 34–36).

(5) The plaintiff's claim of detinue did not apply since there was no element of wrongful detention. Even if the plaintiff's evidence that his cows had fled to the adjoining pieces of land was accepted, the plaintiff did not have any arrangements with the owners or managers of other *ladangs* as to the safety of his cows. Thus, the question of wrongful detention did not arise and if the plaintiff's cows had fled to the other *ladangs* they would be deemed to be trespassing (see paras 41–42).

[Bahasa Malaysia summary

Sekitar tahun 2003 Mohd Mopti bin Yassin ('plaintif') mendakwa telah menghantar 299 ekor lembu ke Ladang Sri Merbau, salah satu daripada beberapa ladang milik Syarikat Ladang LKPP Sdn Bhd ('defendan kedua'), setelah mendapat kebenaran daripada pekerja defendan kedua ('SP3') untuk menyimpan lembu-lembunya atas tanah tersebut. Walau bagaimanapun, sekitar tahun 2005 akibat banjir di Ladang Sri Merbau, lembu-lembu plaintif dikatakan telah beredar ke tanah lebih tinggi bersebelahan. Plaintif mengatakan bahawa meskipun telah diberikan kebenaran oleh defendan kedua untuk mencari lembu-lembu tersebut di tanah tinggi bersebelahan, dia tidak dapat semula semua lembu-lembu tersebut kerana dia tidak diberikan masa mencukupi dan juga kerana dia telah dihalang oleh pihak pengurusan tanah-tanah tersebut daripada mengalihkan lembu-lembu yang didapati semula itu. Plaintif juga mengatakan bahawa beberapa ekor lembu miliknya telah dijual oleh salah seorang pemilik tanah bersebelahan ('defendan ketiga') seperti ia miliknya. Oleh itu plaintif telah memulakan tindakan ini di mana dia menuntut, antara lain, deklarasi bahawa defendan-defendan kedua dan ketiga telah ditahan secara salah dan mengganggu ternakannya tanpa persetujuannya, ganti rugi untuk 298 ekor lembu yang ditahan secara salah oleh defendan-defendan, ganti rugi am kerana menahan secara salah barangan dan kos. SP3, yang merupakan penolong pengurus salah sebuah ladang tersebut pada masa matan, telah mengesahkan bahawa dia telah memberi kebenaran kepada plaintif menternak lembu-lembunya di Ladang Sri Merbau dengan syarat plaintif membayar RM50 sehektar untuk keluasan tanah 300 hektar dan bahawa dia melihat plaintif membawa masuk 299 ekor lembu ke kawasan yang ditetapkan. Walau bagaimanapun, SP3 hanya boleh memberi keterangan bahawa dia telah melihat lembu-lembu plaintif meninggalkan kawasan yang ditetapkan itu kerana banjir yang berlaku pada tahun 2005, tetapi dia tidak dapat mengesahkan sama ada plaintif telah mendapat semula lembu-lembunya. Saksi-saksi lain bagi pihak plaintif telah mengesahkan bahawa mereka bertanggungjawab menghantar 299 ekor lembu ke Ladang Sri Merbau. Saksi defendan kedua, seorang pengurus salah satu daripada ladang tersebut, telah menafikan dakwaan SP3 bahawa plaintif telah dibenarkan membawa lembu-lembunya ke Ladang Sri Merbau dan menafikan mempunyai pengetahuan berhubung apa-apa urusan antara SP3 dan plaintif berkaitan penternakan lembu di Ladang Sri Merbau. Keterangan saksi ini telah disokong oleh lima yang lain. Defendan ketiga telah memanggil dua orang saksi yang menafikan telah menjual mana-mana lembu milik plaintif.

Diputuskan, menolak tuntutan plaintif dengan kos:

(1) Berdasarkan tingkah laku saksi-saksi adalah sukar untuk mahkamah ini menentukan sama ada untuk mempercayai versi plaintif atau versi defendan kedua berhubung sama ada lembu-lembu plaintif sememangnya telah dibenarkan masuk ke tanah defendan kedua. Walau

bagaimanapun, faktor yang menyebabkan keputusan condong berpihak kepada plaintif adalah fakta bahawa tidak terdapat sebab untuk plaintif berbohong atau memilih defendan kedua sebagai musuhnya. Selanjutnya, pekerja defendan kedua sendiri SP3 telah menyokong keterangan plaintif. Oleh itu adalah didapati bahawa plaintif telah membawa lembu-lembunya ke ladang milik defendan kedua dan bahawa lembu-lembu tersebut telah diletakkan di situ sehingga banjir berlaku (lihat perenggan 20–22 & 24).

(2) Mahkamah mendapati testimoni SP3 bahawa plaintif telah meletakkan lembu-lembunya atas tanah defendan kedua atas risikonya sendiri lebih berkemungkinan. Selanjutnya, plantif sedar bahawa kawasan di mana ladang tersebut terletak merupakan kawasan sering berlaku banjir dan dia patut telah dapat menjangkakan bahaya kepada lembu-lembunya sekiranya banjir berlaku. Dalam keadaan berikut, hanya plaintif bertanggungjawab untuk keselamatan lembu-lembunya dan defendan kedua tidak bertanggungjawab untuk kehilangan lembu-lembu plaintif (lihat perenggan 26 & 28–29).

(3) Plaintif percaya bahawa lembu-lembunya telah berkeliaran ke ladang-ladang lain hanya berdasarkan syak wasangka dan bukan pemerhatian. Oleh itu keterangan defendan bahawa ladang-ladang mereka tidak boleh dimasuki dengan senang kerana dipagari dan bersempadankan longkang besar adalah lebih diterima. Dalam kes ini, tiada keterangan yang mencukupi yang dikemukakan oleh plaintif untuk membuktikan bahawa lembu-lembunya telah berkeliaran ke tanah-tanah defendan (lihat perenggan 30–32).

(4) Lembu-lembu plaintif boleh dibezakan daripada lembu-lembu defendan kedua kerana daripada baka luar negara. Plaintif juga tidak boleh secara positif membuktikan bahawa dua ekor lembu yang dijual oleh defendan ketiga adalah miliknya. Justeru itu, plaintif telah gagal membuktikan sama ada mana-mana daripada lembunya telah ditahan secara salah atau dijual oleh defendan-defendan (lihat perenggan 34–36).

(5) Tuntutan detinu plaintif tidak terpakai kerana tiada elemen penahanan secara salah. Meskipun keterangan plaintif yang lembu-lembunya telah berkeliaran ke tanah bersebelahan diterima, plaintif tidak berurusan dengan pemilik atau pengurus ladang-ladang lain berhubung keselamatan lembu-lembunya. Oleh itu, persoalan penahanan salah tidak timbul dan jika lembu-lembu plaintif telah berkeliaran ke ladang-ladang lain ia dianggap menceroboh (lihat perenggan 41–42).]

Notes

For cases on detinue in general, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 624–633.

Cases referred to

Nambiar v Chin Kim Fong [1963] MLJ 60 (folld)
Perbadanan Kemajuan Negeri Selangor v Teo Kai Huat Building Contractor [1982] MLJ 165, FC (folld)

Sarina bt Suhaimi (Suhaimi Tan Zamani & Rozilan) for the appellant.
Nor Zakiah bt Abdul Majid (Zakiah Advocates & Solicitors) for the second respondent.
Siti Sarah bt Mohd Fadzil (Noorhuda & Partners) for the third respondent.

Akhtar Tahir JC:

[1] The plaintiff's claim in this case is for:

(a) A declaration that the second and third defendant had wrongfully detained and interfered with his livestock chattel (298 cows) without his consent.

(b) Damages for the value of the live stock chattel of 298 cows that have wrongfully detained and interfered with by the second and third defendants.

(c) Damages for the offspring and potential offspring of the 298 cows to be assed.

(d) General damages for the wrongful act of detaining and interfering with his chattel.

(e) Costs.

THE BRIEF FACTS OF THE CASE

[2] The brief facts as gleaned from the evidence in this case is that the plaintiff sometime in the year 2003 transported some 299 cows to Ladang Sri Merbau after receiving permission from a person by the name of Hazimi bin Dubuk ('SP3'). The plaintiff regarded Hazimi bin Dibok as a representative of the the second defendant.

[3] However according to the plaintiff sometime in the year 2005 due to floods in Ladang Sri Merbau his cows bolted to the adjoining higher pieces of land and more specifically to Ladang Sri Resak, Ladang Rasau and Ladang Lot 10.

[4] According to the plaintiff none of his cows could be retrieved although he was given permission to search for the cows in the adjoining 'Ladangs'. The reasons he could not retrieve his cows as claimed by the plaintiff was because he

was not given enough time to retrieve the cows and some cows which he managed to retrieve from Ladang Sri Rasau he was prevented from removing them by the management of the *ladang*. Ladang Sri Rasau according to the plaintiff belonged to the second defendant.

[5] The plaintiff also claimed that the cattel which had entered Ladang Lot 10 was sold of by the *ladang* in the guise of belonging to them. He was informed of this fact by the mandor of Ladang Lot 10. The plaintiff further stated that Ladang Lot 10 belonged to the third defendant.

[6] SP3 who was employed with the second defendant at the material time as an assistant manager at Ladang Pulau Manis confirmed that he had given permission to the plaintiff to rear his cows in one of the divisions by the name of Sri Merbau. The conditions imposed upon the plaintiff were that he had to pay RM50 per hectare for a land area of 300 hectares which was equivalent to two female cows a year.

[7] SP3 also confirmed he saw the plaintiff bringing 299 cows to the area designated. SP3 also confirmed that he had noticed the plaintiff's cow had left the designated area because of floods in 2005. SP3 however could not confirm whether the plaintiff could retrieve any of his cows.

[8] Under cross-examination SP3 testified that he had informed the manager Mejar Tahir about the plaintiff's cow being kept at the *ladang*. SP3 further elaborated that the reason the plaintiff was given permission to rear his cows at the *ladang* concerned was to graze on the grass at the *ladang*. SP3 also testified that he had entered into a written agreement with the plaintiff on the rearing of the cows but could not locate the agreement now.

[9] To a question from the court SP3 testified there was no agreement between him and the plaintiff as to will bear the risk for the safety of the cows in the event of any calamities. According to SP3 the safety of the cows was the sole responsibility of the plaintiff.

[10] The other witnesses called by plaintiff were Ishak bin Mat ('SP5') and Zulaffandy bin Mohd Mopti ('SP6') who both confirmed that they were responsible for transporting the 299 cows to the Ladang Sri Merbau using a three ton lorry belonging to SP5.

[11] SP6 further testified that he could identify the cows belonging to his father by looking at the cows and also the plaintiff's cows were tagged on the right ear. The *ladang* according to SP6 tagged the cows on the left ear.

[12] Two other witnesses called by the plaintiff were Dr Johari Hj Bakar ('SP2') who testified as to the value of the cows belonging to the plainitff and Ibrahim bin Senawai ('SP4') who stated that he had received 20 cows from Ladang Lot 10 to be sold two of which the plaintiff claimed belonged to him.

[13] The second defendant called six witnesses comprising of managers and assistant managers of the Ladang Pulau Manis and the other adjacent *ladangs* belonging to the second defendant.

[14] Mejar (B) Tahir bin Sulong ('SD1') the manager of the Ladang Pulau Manis at the material time in which SP3 was the assistant manager refuted SP3's claim that the plaintiff was ever allowed to bring his cows into the *ladang*. SD1 further denied any knowledge of any arrangement between SP3 and the plaintiff with regard to rearing of the cows in Ladang Sri Merbau. SD1 denied he had ever granted permission to the plaintiff to allow the plaintiff's cow to graze the grass in the *ladang* or had sight of any agreement prepared by SP3 and as matter of fact according to SD1 the area of Sri Merbau was swamp land.

[15] SD1's evidence was corroborated by Mohd Sharif bin Diah ('SD2') assistant manager of Ladang Pulau Manis, Shamsuddin bin Abdul Rahman ('SD3') from Ladang Sungai Rasau Mohd Yusof Abdullah ('SD4') the assistant manager of Ladang Sungai Rasau Abdul Basid b Mohamed Yunus ('SD5') the manager of Ladang Sungei Keruing and SD6 from Ladang Sri Resak. The sum total of their evidence being that none of them had seen the plaintiff's cows at the *ladang*.

[16] SD3, SD5 and SD6 however admitted allowing the plaintiff to search for his cows after the flood. The permission was given on humanitarian ground and on application from the plaintiff. The plaintiff was not able to locate any of his cows and had in fact misused the permission given by caging the cows belonging to the *ladang*. SD3 even lodged a police report against the plaintiff for wrongfully confining the cows belonging to the Ladang Sungei Rasau.

[17] The third defendant called two witnesses who basically denied that there was any cow belonging to the plaintiff sold by Ladang Lot 4. All the cows sold belonged to Ladang Lot 10 as evidence from the sale accounts and tagging of the cows.

ISSUES TO BE DETERMINED

Were the plaintiff's cow ever allowed entry into the second defendant's ladang?

[18] There was a clear cut diverse evidence on the matter on not only whether the plaintiff's cow were granted permission to enter into the *ladang*

belonging to the second defendant but also as to whether the plaintiff's cows were at the *ladang* at any point of time.

[19] The plaintiff's evidence was amply corroborated by evidence of other witnesses in showing that 299 cows were brought to the Ladang Sri Merbau and were reared there until the floods caused the cows to flee. The evidence led by the second evidence was equally convincing that not only no permission was granted to the plaintiff to rear the cows at the *ladang* but also that at no point of time the plaintiff's cow were at the *ladang*.

[20] The court was left with the task of determining which of the two versions were to be believed and be accepted. From the demeanour of the witnesses it was difficult to determine who was telling the truth and who was lying.

[21] The factor which tilted the court's decision on this issue towards the plaintiff was the fact that there was no reason for the plaintiff to lie on the matter. There was no animosity between the plaintiff and the second defendant before this. There was no reason for the plaintiff to purposely choose the second defendant as an adversary.

[22] Further the second defendant's own employee SP3 corroborated the evidence of the plaintiff and confirmed that he had dealt with the plaintiff on the matter of rearing the cows at the *ladang*. Whether SP3 acted on his own volition is another matter but the matter remains that he had projected himself as representing the second defendant.

[23] SD1 on the other hand had a reason to feign ignorance of the presence of the plaintiff's cow to avoid liability for the loss to the plaintiff.

[24] In short it was my finding of fact that the plaintiff had brought his cow into the *ladang* belonging to the second defendant and the cows were kept there until the occurrence of the floods causing the cows to flee.

Whether the second defendant was liable for the loss of the cows

[25] To me whether the second defendant was liable for the loss of the plaintiff's cows from the *ladang* is dependent upon the factor whether the second defendant had taken responsibility for the safety of the cows.

[26] On this matter I believed the testimony of SP3 that the agreement

between him and the plaintiff was that the cows were kept by the plaintiff at his own risk and the plaintiff was solely responsible for the safety and upbringing of the cows.

[27] The main consideration in allowing the plaintiff's cows to be reared at the *ladang* belonging to the second defendant was that it saved the cost of buying pesticide by the second defendant as the cows could graze upon the grass at the *ladang*. The benefit to the plaintiff was that this arrangement allowed him a place to rear his cows after he was forced to move out from the Felda land.

[28] Further the plaintiff was aware that the area where the *ladangs* were situated were flood prone and therefore the plaintiff should have foreseen the danger faced by the cows in the event of floods particularly in the area they were kept as it was a low lying area.

[29] I therefore ruled that the second defendant was not liable for the loss of the plaintiff's cows.

Had the cows strayed to the other ladangs?

[30] The plaintiff's believe that his cows had strayed to other *ladangs* was based on mere suspicion and not on observation or surveillance. This was borne out by the fact that although the plaintiff had been given ample time he could not relocate his cows nor positively identify that any of the cows he had rounded up belonged to him.

[31] The plaintiff's contention that the cows could have gone to other *ladangs* was on the premises that the other *ladangs* were situated on higher land. However on this matter I accepted the evidence of the defendants that their *ladangs* were not easily accessible because there were fenced and demarcated by wide drains.

[32] I concluded that there was no sufficient evidence led by the plaintiff to prove that any of his cows had strayed to the other *ladangs*.

Whether the other ladangs had wrongfully confined or sold the cows belonging to the plaintiff

[33] This led to the next question whether the 200 cows rounded up in the second defendant's *ladang* belonged to the plaintiff. It is ironic that it was the assistant manager of the second defendant's *ladang* who had lodged a police

report against the plaintiff for wrongfully confining the cows belonging to the second defendant and not the way around.

[34] The cows belonging to the second defendant being of the local breed were distinguishable from the cows belonging to the plaintiff which were of foreign breed. This wrongful confinement by the plaintiff happened when on humanitarian ground the plaintiff was granted permission to try to find his cows. The plaintiff on the other hand rounded up the second defendant's cows and confined them.

[35] The plaintiff also could not positively proof that two of the cows sold by the third defendant belonged to him. In fact the photographs of the cow tendered in court clearly showed that the cows were tagged at the left ear as opposed to the testimony of the plaintiff that all his cows were tagged at the right ear.

[36] The plaintiff again failed to prove whether any of his cows were wrongfully confined or sold by the second or third defendants.

Tort of detinue

[37] In bringing this action the plaintiff had relied upon the law of detinue. The tort of detinue as described in one text book describes detinue as involving wrongful detention of goods by the defendant and this covers two circumstances; first where he is in possession of such goods and loses them and secondly, the refusal without justification to deliver the goods to the person so entitled (*Principles of the Law of Torts in Malaysia* by Wan Azlan Ahmad and Mohsin Hingun, Malayan Law Journal, 1998 edition).

[38] In my opinion the application of the tort of detinue by the plaintiff in this case is misconceived as is borne out by a number of Malaysian cases where the underlying element that needs to be proven is unlawful detention after the completion of certain agreement.

[39] This is best illustrated in the case of *Nambiar v Chin Kim Fong* [1963] MLJ 60 where the plaintiff had sent his car to the defendant to be repaired and the defendant subsequently refused to return the car after the repair. Adam J stated as follows at p 61:

> Detinue is the adverse detention of specific goods and it follows that since the plaintiff's motor car was bailed to the defendant by the Safety Insurance Co Ltd for the purposes of effecting repairs in pursuance to the contract of insurance with the

plaintiff, the plaintiff must prove that the bailment was terminated and that the defendant was wrongfully withholding possession of the motor car from the plaintif who was the owner thereof.

[40] In the case of *Perbadanan Kemajuan Negeri Selangor v Teo Kai Huat Building Contractor* [1982] MLJ 165 at p 166 Abdul Hamid FJ (as His Lordship then was) stated thus:

> The evidence reveals that upon termination of the contract between the appellants and the main contractors and consequently the respondents and the main contractors, the appellants refused to allow the respondents to remove the machinery and thereafter wrongfully detained them. This is not denied by the appellants. An examination of the respondent's claim discloses that the action was founded, in the main, upon an allegation that there was wrongful detention of the machinery by the appellants and this arose as a result of the appellant's refusal to allow the respondents to remove the machinery. We have said 'in the main' because the respondents have made an alternative claim for damages for conversion in the prayer to the statement of claim. No specific allegation is however made in the body of the statement of claim. In our view the respondent's claim was substantially founded not on conversion but in detinue.

[41] Applying the above principles to the present case it is clear that any arrangement the plaintiff had was with SP3 to keep the cows at a specific place that is at Ladang Sri Merbau one of the many *ladangs* belonging to the second defendant around that area. The plaintiff's own testimony shows during the flood his cows had fled and taken cover in other *ladangs*. So where is there an element of *wrongful detention* by Ladang Sri Merbau? The claim of detinue clearly does not apply.

[42] Even if the evidence of the plaintiff is accepted that his cows had fled to the other *ladangs* clearly the plaintiff did not have any arrangements with the other *ladangs* as to the safety of his cows. The question of wrongful detention does not arise at all. In fact if the cows had fled to other *ladangs* they would be deemed to be trespassing and the other *ladangs* could very well slaughter the cows and eat them.

CONCLUSION

[43] As a conclusion it is my decision that not only the plaintiff had failed to

prove his claim against the defendants he had even failed to show any cause of action against the defendants. I therefore dismissed the plaintiff's claim with a cost of RM5,000 against each of the defendant.

Plaintiff's claim dismissed with costs.

Reported by Kohila Nesan